

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

tmd3574/mrm

May 2, 2019

09:30 AM

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IN RE:

Case No. 819-71697-AST

JOHN FRANCIS VIVENZIO
dba VIVENZIO ASSOCIATES, LLC
dba INTELINTIX SOFTWARE

Hon. ALAN S. TRUST

NOTICE OF MOTION

Debtor.
=====X

PLEASE TAKE NOTICE, that upon the within application, Marianne DeRosa, Chapter 13 Trustee will move this court before the Hon. Alan S. Trust, U.S. Bankruptcy Judge, at the United States Bankruptcy Court, at 290 Federal Plaza, Room 963, Central Islip, New York, 11722, on May 2, 2019 at 09:30 AM or as soon thereafter as counsel can be heard, for an order pursuant to 11 U.S.C. 1307(c) dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

Responsive papers shall be filed with the bankruptcy court and served upon the Chapter 13 Trustee, Marianne DeRosa, Esq., no later than seven (7) business days prior to the hearing date set forth above. Any responsive papers shall be in conformity with the Federal Rules of Civil Procedure and indicate the entity submitting the response, the nature of the response and the basis of the response.

Date: Jericho, New York
April 12, 2019

/s/ Marianne DeRosa
MARIANNE DeROSA, TRUSTEE
100 JERICHO QUADRANGLE; STE 127
JERICHO, NY 11753
(516) 622-1340

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IN RE:

Case No: 819-71697-AST

JOHN FRANCIS VIVENZIO
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Hon. ALAN S. TRUST

APPLICATION

Debtor.

=====X

TO THE HONORABLE ALAN S. TRUST U.S. BANKRUPTCY JUDGE:

MARIANNE DEROSA, Chapter 13 Trustee in the above-captioned estate, respectfully represents the following:

1. The Debtor filed a petition under the provisions of 11 U.S.C. Chapter 13 on March 8, 2019, and, thereafter, MARIANNE DEROSA was duly appointed and qualified as Trustee.

2. The Debtor's proposed Chapter 13 Plan (hereinafter referred to as "the Plan") is dated March 22, 2019 and reflected on the Court's docket as number 19. The Plan provides for payments in the amount of \$2,552.00 per month for a period of 60 months.

3. The Trustee objects to the confirmation of the Plan because the Plan is not adequately funded to provide for full repayment to all secured creditors as required by 11 U.S.C § 1325(a)(5).

4. Furthermore, the Debtor has failed to:

a. comply with 11 U.S.C § 1325(a)(6) in that the Debtor has failed to submit timely Chapter 13 Plan payments to the Trustee; and

b. provide the Trustee with a copy of a federal income tax return or transcript for the most recent year, 7 days before first meeting of creditors pursuant to 11 U.S.C. §521(e)(2)(A)(i); and

c. serve the plan on the trustee and all creditors within 7 days of filing of the plan and file proof of service there of as required by E.D.N.Y. LBR 3015-1(b).

5. The Debtor's failure to provide these items impedes the Trustee's ability to administer this case and, therefore, is a default that is prejudicial to the rights of the creditors of the Debtor pursuant to 11 U.S.C. §1307(c)(1).

6. Each of the foregoing constitutes cause to dismiss this Chapter 13 case within meaning of 11 U.S.C. §1307(c).

WHEREFORE, the Chapter 13 Trustee respectfully requests that this Court enter an Order dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

Dated: Jericho, New York
April 12, 2019

s/Marianne DeRosa
Marianne DeRosa
Chapter 13 Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:

Case No: 819-71697-AST

JOHN FRANCIS VIVENZIO
dba VIVENZIO ASSOCIATES, LLC
dba INTELINTIX SOFTWARE

CERTIFICATE OF SERVICE
BY MAIL

Debtor.

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This is to certify that I, Matthew R. Matz, have this day served a true, accurate and correct copy of the within Notice of Motion and Application by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

JOHN FRANCIS VIVENZIO
153 QUAKER PATH
SETAUKET, NY 11733

BMW BANK OF NORTH AMERICA
C/O AIS PORTFOLIO SERVICES, LP
4515 N SANTA FE AVE. DEPT. APS
OKLAHOMA CITY, OK 73118

SELENE FINANCE, LP
FRIEDMAN VARTOLO LLP
1325 FRANKLIN AVENUE, SUITE 230
GARDEN CITY, NY 11530

This April 12, 2019

/s/Matthew R. Matz
Matthew R. Matz, Paralegal
Office of the Standing Chapter 13 Trustee
Marianne DeRosa, Esq.
100 Jericho Quadrangle; Ste 127
Jericho, NY 11753
(516) 622-1340

CASE NO: 819-71697-AST
Hon. ALAN S. TRUST

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:

JOHN FRANCIS VIVENZIO
dba VIVENZIO ASSOCIATES, LLC
dba INTELINTIX SOFTWARE

Debtor.

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NOTICE OF MOTION AND APPLICATION TO DISMISS CASE

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MARIANNE DeROSA, TRUSTEE
100 JERICO QUADRANGLE; STE 127
JERICO, NY 11753
(516) 622-1340